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DOCKETS

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BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

Joint Application of)	
)	
DELTA AIR LINES, INC.)	
KOREAN AIR LINES CO. LTD.)	
SOCIETE AIR FRANCE)	
ALITALIA-LINEE AEREE ITALIANE-S.P.A.)	Docket OST-2002-11842 - 4
CZECH AIRLINES)	
)	
Under 49 U.S.C. §§ 41308 and 41309 for approval)	
of and antitrust immunity for alliance agreements)	

MOTION OF KOREAN AIR LINES CO., LTD. FOR
CONFIDENTIAL TREATMENT UNDER 14 C.F.R. § 302.12

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Counsel for Korean Air Lines Co., Ltd.

Dated: April 2, 2002

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

Joint Application of)	
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DELTA AIR LINES, INC.)	
KOREAN AIR LINES CO. LTD.)	
SOCIETE AIR FRANCE)	
ALITALIA-LINEE AEREE ITALIANE-S.P.A.)	Docket OST-2002-11842
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Dated: April 2, 2002

MOTION OF KOREAN AIR LINES CO., LTD. FOR
CONFIDENTIAL TREATMENT UNDER 14 C.F.R. § 302.12

Pursuant to Rule 12 of the Department's Rules of Practice, 14 C.F.R. § 302.12, Korean Air Lines Co., Ltd. ("Korean Air") hereby moves to withhold from public disclosure the confidential, proprietary, and commercially sensitive information that Korean Air is filing under seal in the above-captioned proceeding. Korean Air is submitting these documents to facilitate the Department's review of the Joint Application of Delta Air Lines, Inc., Korean Air, Société Air France. Alitalia-Linee Aeree Italiane-S.P.A., and Czech Airlines for alliance approval and antitrust immunity in Docket OST-2002-11842.

The documents for which Korean Air requests confidential treatment are listed in the attached index and have been marked "Confidential" in accordance with Rule 12, and are being

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Confidential Treatment
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submitted in sealed envelopes labeled “Confidential Treatment Requested Under 14 C.F.R. § 302; Access Is Limited to Counsel or Outside Experts Who Have Filed Valid Confidentiality Affidavits.” These documents are in addition to and not duplicative of the documents previously submitted under seal in this docket by Delta Air Lines, Inc. on March 13, 2002. In further support of this request, Korean Air respectfully states as follows.

**I. THE DOCUMENTS ARE PROTECTED FROM PUBLIC DISCLOSURE
PURSUANT TO THE FREEDOM OF INFORMATION ACT**

This documents for which Korean Air requests confidential treatment are protected from public disclosure pursuant to various exemptions to the Freedom of Information Act (“FOIA”), including 5 U.S.C. § 552(b)(4). The purpose of the exemptions to FOIA “is to protect the confidentiality of information which citizens provide to their government, but which would customarily not be released to the public, and to facilitate citizens’ ability to confide in their government.” Burke Energy Corp. v. Dept. of Energy, 583 F. Supp. 507, 510 (D.Kan. 1984).

To be eligible for an exemption pursuant to 5 U.S.C. § 552(b)(4), the information must fulfill three requirements: (1) the information must be commercial or financial in nature; (2) the information must be obtained from a person outside of the U.S. government; and (3) the information must be confidential or privileged. See, e.g., Public Citizen Health Research Group v. FDA, 704 F.2d 1280, 1290 (D.C. Cir. 1983). This exemption has been construed to prevent public disclosure of information that is not the type usually released to the public, and that if released would cause substantial harm to the competitive position of the person from whom the information was obtained. See, e.g., Gulf & Western Industries, Inc. v. United States, 615 F.2d 527, 530 (D.C. Cir. 1980); American Airlines, Inc. v. Natl. Mediation Bd., 588 F.2d 863, 871 (2d Cir. 1978); National Parks & Conservation Assn. v. Kleppe, 547 F.2d 673, 684 (D.C. Cir. 1976).

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The Department has followed this standard in previous anti-trust immunity proceedings. See, e.g., Joint Application of Delta Air Lines, Inc. and Virgin Atlantic Airways Ltd., Order 94-5-42 (May 28, 1994); Joint Application of United Air Lines, Inc. and Lufthansa German Airlines, Order 93-12-32 (Dec. 18, 1993).

The documents for which Korean Air requests confidential treatment satisfy all three elements of the statutory test. First, the documents are commercial or financial in nature. Second, they have been provided by Korean Air, which is a person outside of the U.S. government. Third, the documents contain information that is confidential, proprietary, and commercially sensitive that would not otherwise be made public. Korean Air submits that the public disclosure of the information at issue here would cause substantial harm to its competitive position, and could impair the U.S. government's ability to obtain similar information on a voluntary basis from persons in the future. See, e.g., National Parks & Conservation Assn. v. Morton, 498 F.2d 765,770 (D.C. Cir. 1974).

**11. ACCESS TO THESE DOCUMENTS SHOULD BE RESTRICTED TO
COUNSEL AND OUTSIDE EXPERTS**

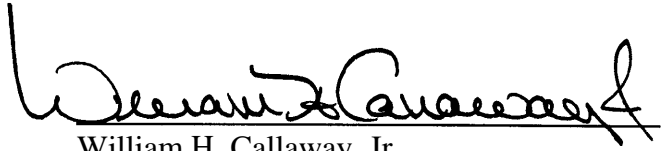
Korean Air is submitting highly sensitive internal corporate documents and information that should be accorded limited access. If released, competitors would gain valuable insights into each carrier's internal strategies and objectives with respect to their individual business plans and strategies and as to their proposed relationship. Access should be granted only to counsel and outside experts who file affidavits stating that the affiant will (1) use the information only for the purpose of participating in this proceeding, and (2) not to disclose such information to anyone other than counsel or outside experts who have filed a valid affidavit.

The request to limit disclosure to counsel and outside experts is fully consistent with Department precedent and policy. In the Joint Application of United and Lufthansa, *supra*, the Department granted the joint applicants' request to limit access to confidential information to counsel and outside experts who filed appropriate affidavits. In restricting such access, the Department balanced the disclosure of confidential information against the competitive harm to the applicants that would result from such access, and concluded that "the undue competitive harm to the applicants outweighs the commenters' need for expanded access to the highly sensitive material in this case." *Id.* at 5. The Department also noted that "interested parties to this proceeding can obtain adequate advice on the merits of the application through outside experts and persons authorized to review the materials." *Id.* See also Joint Application of American Airlines, Inc. and Canadian Airlines International, Ltd., Order 96-1-6, at 3 (Jan. 11, 1996).

Access to Korean Air's internal documents and data should be limited in a comparable manner, in light of the undue competitive harm to Korean Air that would result from a broader disclosure of such highly sensitive information.

WHEREFORE, Korean Air respectfully requests that the Department grant its motion to withhold confidential, proprietary, and commercially sensitive documents and information from public disclosure, as requested herein.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "William H. Callaway, Jr.", written over a horizontal line.

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Dated: April 2, 2002

Bates Range	Date	Description	Production Category
KE001-KE035	Oct. 1999	Alliance Strategy	2, 3
KE036-KE094	Jan. 10,2002	SkyTeam Joint Sales Management Project 1 (JSM1)	2, 3
KE095-KE108	Sept. 13,2001	P050M Project Progress Report (7)	2
KE109	Sept. 12,2001	J. Y. Lee, "Korean Gov't Approved KE's Joining U.S. Cargo J/V LLC"	2
KE110	Undated	CRS display of codeshare	2

N.B., these documents are in addition to and not duplicative of the documents previously submitted under seal in this docket by Delta Air Lines, Inc. on March 13,2002.

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of April 2002, a copy of the foregoing MOTION OF KOREAN AIR LINES CO., LTD. FOR CONFIDENTIAL TREATMENT UNDER 14 C.F.R. § 302.12 was served on the parties below in accordance with the Department's Rules of Practice.



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